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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/706,491	11/03/2000	Gregory E. Ross	RI-69912/MAK	6486

7590

07/29/2003

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EXAMINER

BARR, MICHAEL E

ART UNIT

PAPER NUMBER

1762

DATE MAILED: 07/29/2003

19

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/706,491

Applicant(s)

ROSS, GREGORY E.

Examiner

Michael Barr

Art Unit

1762

--Th MAILING DATE of this communication appears on the cover sheet with the corresponding address --

THE REPLY FILED 22 July 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) ☐ they raise the issue of new matter (see Note below);
 - (c) ☒ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: see attached sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: 1-22.

Claim(s) objected to: 24.

Claim(s) rejected: 23, 25-35, 47, 55-63.

Claim(s) withdrawn from consideration: 36-46 and 48.

8. ☐ The proposed drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☐ Other: _____

Michael Barr
Primary Examiner
Art Unit: 1762

Continuation of 2. NOTE: the new limitations of the requirement of the modifying occurring during the formation of the pattern raises a new issue which requires further search and consideration.

ADVISORY ACTION

1. The applicant has argued that the finality of the rejection against Claims 32 and 60, since the applicant cannot find the basis for the 35 USC 102 rejection over the Hill reference. The examiner points out paragraph 8 of Paper No. 14, mailed 11/6/2002, which rejects Claims 32 and 60 under 35 USC 102 over the Hill reference. This “new” rejection of Claim 32 under 35 USC 102 was necessitated by the applicant’s amendment filed 10/21/2002. The 35 USC 102 rejection of Claim 60 over the Hill reference was first made in paragraph 4 of Paper No. 8, mailed 4/16/2002, and this was necessitated by the applicant’s amendment filed 3/8/2002. The basis for the rejections of Claims 32 and 60 is found in paragraph 10 of the first office action, Paper No. 2, mailed 6/1/2001, as is clearly referred to in Paper Nos. 8 and 14. Therefore, it is the position of the examiner that the basis for the 35 USC 102 rejections of Claim 32 and 60 have been set forth by the previous office actions and thus the finality of the rejection was proper and is being maintained.

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2. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Barr whose telephone number is 703-305-7919. The examiner can normally be reached on Monday-Thursday 6:00 am-4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Shrive Beck can be reached on 703-308-2333. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 or 703-305-5408 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.



Michael Barr
Primary Examiner
Art Unit 1762

MB
July 28, 2003